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Article (Accepted Version)

Henderson, Christian (2017) Reading between the lines: the Iraq inquiry, doctrinal debates, and the legality of military action against Iraq in 2003. *British Yearbook of International Law*, 87 (1). pp. 105-124. ISSN 0068-2691

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READING BETWEEN THE LINES: THE IRAQ INQUIRY, DOCTRINAL DEBATES, AND THE LEGALITY OF MILITARY ACTION AGAINST IRAQ IN 2003

By CHRISTIAN HENDERSON*

I. INTRODUCTION

The military action against Iraq in 2003 gave rise to a vast array of doctrinal academic literature that engaged with—and hotly debated—the legality of the invasion.¹ The debate focused primarily on the so-called ‘revival’ argument, but also to a lesser extent on the issue of the permissibility of the right of pre-emptive self-defence. The Iraq Inquiry was not established to address and cast judgment upon the legality of the military action or to resolve the doctrinal debates that continue to rumble in connection with it. Indeed, when former UK Prime Minister Gordon Brown announced the establishment of the Inquiry in Parliament on 15 June 2009, he noted that it was given the mandate of enabling the UK to ‘learn the lessons from the events surrounding the conflict’ so as to ‘strengthen the health of our democracy, our diplomacy and our military’.² There was no mention of international law or whether the Inquiry would aim to resolve or pass judgment on any legal issues in connection with the UK’s involvement in Iraq between 2001 and 2009.

It was therefore somewhat surprising that the Iraq Inquiry subsequently expressly interpreted its mandate as to address international legal issues arising from the conflict. At its launch on 30 July 2009, Sir John Chilcot stated that while ‘[t]he Inquiry is not a court of law and nobody is on trial’, members of the Committee were nevertheless ‘determined to be thorough, rigorous, fair and frank to enable [them] to form impartial and evidence-based judgements on all aspects of the issues, including *the arguments about the legality of the conflict*’.³ In January 2011, Sir John Chilcot further stated in a letter to Sir Gus O’Donnell (then Cabinet Secretary) that ‘the legal basis for military action and the way in which this developed [is] a central part of the Inquiry’s work’.⁴ Upon the launch of the Report of the Inquiry on 6 July 2016—and amongst these rather mixed signals—Sir John Chilcot stated finally that ‘the Inquiry has not expressed a view on whether military action was legal ... [t]hat could, of course, only be resolved by a properly constituted and internationally recognised Court’,⁵ and the

* Professor of International Law, University of Sussex, UK. Email: c.m.henderson@sussex.ac.uk. All URLs are correct as of [date of final submission for typesetting].

¹ See, eg, M Weller, *Iraq and the Use of Force in International Law* (OUP 2010) 132–88; D McGoldrick, *From ‘9-11’ to the Iraq War 2003: International Law in an Age of Complexity* (Hart 2004) 47–86; SD Murphy, ‘Assessing the Legality of Invading Iraq’ (2004) 92 *Georgetown Law Journal* 173; ‘Agora: Future Implications of the Iraq Conflict’ (2003) 97 *AJIL* 553, 883 (for a range of opinions on the legality of the military action against Iraq in 2003); C Henderson, *The Persistent Advocate and the Use of Force: The Impact of the United States upon the Jus ad Bellum in the Post-Cold War Era* (Ashgate 2010) 63–95; C Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 354–366; L Moir, *Reappraising the Resort to Force: International Law, Jus ad Bellum and the War on Terror* (Hart 2010) 73–106; ND White, ‘The Will and Authority of the Security Council After Iraq’ (2004) 17 *Leiden Journal of International Law* 645.

² HC Deb 15 June 2015, vol 494, col 22 <<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090615/debtext/90615-0004.htm>>.

³ See Chilcot, ‘Statement of Sir John Chilcot, Chairman of the Iraq Inquiry, at a news conference on Thursday, 30 July 2009’ <<http://www.iraqinquiry.org.uk/the-inquiry/news-archive/2009/2009-07-30-opening/statement-by-sir-john-chilcot-chairman-of-the-iraq-inquiry-at-a-news-conference-on-thursday-30-july-2009/>> (emphasis added).

⁴ ‘Letter from Sir John Chilcot to Sir Gus O’Donnell’ (The Iraq Inquiry, 6 January 2011)t <<http://www.iraqinquiry.org.uk/media/96297/2011-01-06-Letter-Chilcot-to-ODonnell.pdf>>.

⁵ Chilcot, ‘Statement by Sir John Chilcot, 6 July 2016’ <<http://www.iraqinquiry.org.uk/media/247010/2016-09-06-sir-john-chilcots-public-statement.pdf>>.

Introduction to the Report explained that ‘[t]he Inquiry has not expressed a view as to whether or not the UK’s participation in the conflict was lawful.’⁶ In light of these mixed signals one may reasonably question whether the Report, and the process of the Inquiry in general, ultimately contributed anything to the academic debates regarding the legality of the military action against Iraq and, in particular, the infamous ‘revival’ argument upon which it was based.⁷

Although the Report does not expressly pronounce upon whether the 2003 Iraqi invasion was lawful, there are two aspects of the Report that make it of value in regards to the specific issue of the legality of the military action. First, the Report highlights and engages with the law in this area, that is, the law governing the use of force. None of the Committee members were international lawyers. Yet, within a few months of its establishment, the Inquiry appointed Dame Rosalyn Higgins to advise on matters of international law, with the Report noting the direct contribution that Dame Rosalyn had made to its conclusions.⁸ Furthermore, on 2 June 2010, the Inquiry invited submissions from international lawyers ‘on the issues of law arising from the grounds on which the government relied for the legal basis for military action’,⁹ signifying not only the importance that legal considerations played in the deliberations of the Inquiry, but the importance of the specific question of the legality of the military action. Although the Inquiry did not specifically refer to these submissions in its final Report, all 37 of them were published along with the Report on the Inquiry’s website¹⁰ and while not indicating that the Committee aligned itself with the views of these submissions (all but one indicating that the military action could not be legally justified upon the ‘revival’ argument), it would be somewhat surprising if they had not had some influence upon the direction of the analysis and final conclusions of the Inquiry. Indeed, the Report expressly stated that it used these submissions ‘to inform its consideration of legal issues’.¹¹

Furthermore, Sections 3.5 and 5 of the Report, which explore how the legal advice from the UK Attorney General, Lord Goldsmith—namely, that there was a sound legal basis for military action—developed in the twelve months preceding the launch of military action on 19 March 2003,¹² provide real insights into the factual and international legal issues involved.¹³ For example, in addressing how the legal basis for military action was developed and constructed, the Report provides an in-depth account of the views and positions of various individuals within the UK and US, the interactions of these individuals, and, importantly, whether and why their positions changed in the months preceding the legality of the military

⁶ The Report of the Iraq Inquiry (Report of a Committee of Privy Counsellors), 6 July 2016, vol 1, Introduction, paras 99–100. All sections of the Report are available at <<http://www.iraqinquiry.org.uk/the-report/>>. This can be contrasted with the report of the Dutch Davids Commission of 2010 <http://www.iraqinquirydigest.org/?page_id=7576>, which was established to inquire into the support of the Dutch government for military action in Iraq.

⁷ The revival argument is clearly set out in ‘Attorney General’s Advice on the Iraq War: Resolution 1441’ (2005) 54 ICLQ 767.

⁸ Report, vol 1, Introduction, para 10.

⁹ ‘The Iraq Inquiry Invites Submissions from International Lawyers’ (The Iraq Inquiry, 2 June 2010) <<http://www.iraqinquiry.org.uk/the-inquiry/news-archive/2010/2010-06-02-submissions-from-international-lawyers/>>.

¹⁰ The Iraq Inquiry, International Law Submissions <<http://www.iraqinquiry.org.uk/other-material/submissions-international-law/>>.

¹¹ Report, vol 1, Introduction, para 98.

¹² See Report, vol 5, Section 5. Relevant testimony on this issue was provided by *inter alia* Lord Goldsmith QC, Cathy Adams, Elizabeth Wilmshurst, Sir Michael Wood, Sir Daniel Bethlehem, Sir Franklin Berman, Jack Straw, and Tony Blair. On this issue see also JA Green and S Samuel, ‘The Chilcot Report: Some Thoughts on International Law and Legal Advice’ (2016) 22 Journal of Conflict and Security Law 333; O Hathaway, ‘What the Chilcot Report Teaches Us About National Security Lawyering’ (*Just Security*, 11 July 2016) <<https://www.justsecurity.org/31946/chilcot-report-teaches-national-security-lawyering/>>.

¹³ See Report, vol 2, Sections 3.5 and 5.

action. In addition, the Report, which summarizes the *jus ad bellum* as the ‘prohibition on the use of force except in self-defence or where clearly authorised by the Security Council’,¹⁴ draws specific attention to, as well as providing explanations of, various issues in separate highlighted boxes on topics such as the concept of ‘material breach’,¹⁵ the Vienna Convention on the Law of the Sea in the context of the interpretation of resolutions of the UN Security Council,¹⁶ and the ‘revival’ argument itself.¹⁷

A second, and important, aspect of the Report that is of relevance in connection with the international legal issues are the four damning conclusions reached by the Inquiry. Each has clear, albeit sometimes implicit, implications for the legality of the action. While much of the contents of the Report was not novel at the time that it was launched on 6 July 2016, the conclusions and findings of the Inquiry were, and had not been leaked. The key relevant headline conclusions can be summarised as follows:

- ‘[i]n the absence of a majority in support of military action ... the UK ... undermin[ed] the Security Council’s authority’.¹⁸
- ‘[m]ilitary action ... was not a last resort’;¹⁹ and
- ‘[t]here was no imminent threat from Saddam Hussein’.²⁰

Space does not permit the depth of analysis that the publication of the Report deserves, but this short contribution will nevertheless briefly assess what the Report of the Iraq Inquiry adds to the key areas of doctrinal debate on the legality of the Iraq invasion and whether it enables us to think differently about the areas of disagreement. What becomes clear is that while in certain respects the Report is ‘of devastating clarity’,²¹ for the most part it requires the art of reading between the lines.

II. THE REVIVAL ARGUMENT AND THE INTERPRETATION OF UN SECURITY COUNCIL RESOLUTIONS

The focus of the doctrinal debates on the revival argument was the textual and contextual disagreement on the interpretation and combined effect of the three main UN Security Council resolutions—678 (1990), 687 (1991), and 1441 (2002)—as well as the influence of other Council resolutions—including *inter alia* 686 (1991), 707 (1991), 1154 (1998), and 1205 (1998)—and Council presidential statements and statements by the UN Secretary General. In short, the question was whether the coalition states were permitted to ‘revive’ the prior authorisation to use ‘all necessary means’ contained within resolution 678 (1990) in order to compel Iraq to comply with its disarmament obligations in resolutions 687 (1991) and 1441 (2002), or was a further decision, or authorisation, from the Security Council required?

The interpretation of Security Council resolutions as a discrete process has received relatively little academic attention and virtually no consideration from the Council itself. Most commentators have drawn upon the rules of treaty interpretation contained within the Vienna

¹⁴ Report, vol 5, Section 5, para 574.

¹⁵ Ibid, 12.

¹⁶ Ibid, 26–27.

¹⁷ Ibid, 22–25.

¹⁸ Chilcot, ‘Statement by Sir John Chilcot, 6 July 2016’; Report, Executive Summary, para 439.

¹⁹ Report, Executive Summary, para 20.

²⁰ Chilcot, ‘Statement by Sir John Chilcot, 6 July 2016’.

²¹ P Sands, ‘A Grand and Disastrous Deceit’ (2006) 38 London Review of Books 9 <<https://www.lrb.co.uk/v38/n15/philippe-sands/a-grand-and-disastrous-deceit>>.

Convention of the Law of Treaties (VCLT) for interpretive guidance.²² The Report of the Iraq Inquiry also appears to endorse the approach contained within this instrument, given its inclusion of an explanatory box specifically on ‘The Vienna Convention on the Law of Treaties: Articles 31–33’ in its discussion of the revival argument.²³ The Report does not, however, explain how a convention on treaties can be applied to the interpretation of resolutions of an international organization, with the apparent inference being that because they are both textual documents the same rules of interpretation apply. A key term of Resolution 1441 (2002) that gave rise to interpretive disagreement prior to the forcible intervention in Iraq in 2003, and was a focus of the Iraq Inquiry, was that of ‘material breach’, in particular who possessed the authority to determine one in regards to Iraq’s disarmament obligations and the ensuing consequences.

A. The centrality of the concept of ‘material breach’

The starting point for the interpretive debates was the continued temporal validity of the authorisation to use ‘all necessary means’ contained within resolution 678 (1990). If this authorisation was no longer valid, then there would be no authorisation to revive. Some academic commentators argued that as no time limits had been imposed on the authorisation in this resolution the mandate to ‘restore international peace and security’ remained open, thus enabling the coalition states to enforce the disarmament obligations by reviving the authorisation to use force,²⁴ while others argued that, given the very different circumstances pertaining in 2003, some 12 years after the resolution was relied upon to evict Iraq from Kuwait, it was not possible to revive the authorisation.²⁵

However, even for those inclined to concede that the authorisation remained dormant, there remained the question as to whether there were any conditions for its revival. For example, resolution 687 (1991) contained a ‘formal ceasefire’, yet there was disagreement between academics and commentators over the meaning of the Council’s use of this term on this occasion. Some were of the view that, given the extent and substance of resolution 687 (1991) and its prelude in the form resolution 686 (1991), the ceasefire was, in essence, a final peace treaty, thus ultimately terminating the authorisation.²⁶ On the other hand, there were those who argued that it was a ceasefire *simpliciter*, with the possibility of the resumption of military action should Iraq be found in violation of its obligations under the resolution.²⁷ Attention was, in this respect, given to the identity of the parties to the ceasefire. Some argued that the parties consisted of Iraq and the coalition states,²⁸ meaning that a breach by Iraq provided the decision to resume hostilities to the US *et al*, while others focused on the institutional nature of the document in which the ceasefire was contained (a resolution of the UN Security Council) in arguing that the ‘ceasefire’ was between Iraq and the Security

²² See, eg, M Wood, ‘The Interpretation of Security Council Resolutions’ (1998) 2 Max Planck Yearbook of United Nations Law 73; E Papastavridis, ‘Interpretation of Security Council Resolutions under Chapter VII in the Aftermath of the Iraq Crisis’ (2007) 56 ICLQ 83.

²³ Report, vol 5, Section 5, 26.

²⁴ See, eg, J Yoo, ‘International Law and the War in Iraq’ (2003) 97 AJIL 563, 567.

²⁵ See, eg, T Gazzini, *The Changing Rules on the Use of Force in International Law* (Manchester University Press 2005) 67; Gray, *International Law*, 361; Murphy, ‘Assessing the Legality of Invading Iraq’, 181; J Lobel and M Ratner, ‘Bypassing the Security Council: Ambiguous Authorizations to Use Force, Ceasefires and the Iraqi Inspection Regime’ (1999) 93 AJIL 124, 129.

²⁶ See, for example, Gray, *International Law*, 144. See also Murphy, ‘Assessing the Legality of Invading Iraq’, 200.

²⁷ Y Dinstein, *War, Aggression and Self-Defence* (5th edn, Cambridge University Press 2011) 321.

²⁸ See, eg, Dinstein, *ibid*, 324; Yoo, ‘International Law and the War in Iraq’, 569.

Council.²⁹ While some scholars considered this latter view to be ‘unduly formalistic and unrealistic’,³⁰ others rested upon the pragmatic, but ultimately indeterminate, conclusion that ‘[b]y its terms, Resolution 687 of April 1991 neither expressly suspended nor expressly terminated Resolution 678’.³¹

The Iraq Inquiry does not expressly address these points of interpretive disagreement in its Report, or directly aid in resolving them. However, it also arguably did not need to because its focus was on the more pertinent and vexing issue of the determination of the existence and consequence of a ‘material breach’ of the disarmament obligations contained within resolution 687 (1991) and other relevant resolutions. This term had been employed by the Security Council at various stages of the Iraq debacle, including, most prominently, within resolution 1441 (2002), which determined that ‘Iraq has been and *remains in material breach* of its obligations’³² and that ‘failure by Iraq at any time to comply with, and *cooperate fully* in the implementation of, this resolution shall constitute a *further material breach* of [its] obligations and will be reported to the Council for assessment’.³³ Understanding the concept of a material breach, including the acts which constituted such a breach and who possessed the authority to determine the existence and then the consequences of one, became the focal point of disagreement between states and scholars as to when the option of forcible measures would be on the table. This significance was not lost on the Inquiry as it made clear that in its view ‘[t]he concept of “material breach” is central to the revival argument’.³⁴

B. Differing Views on the Acts that Constitute a ‘Material Breach’

The Report of the Iraq Inquiry does not take a position on what might constitute a material breach, or a failure to fully cooperate in this context. It does, however, establish that the US government had long taken the view that whether Iraq was in ‘material breach’ of its Security Council obligations was an ‘objective fact’ and that it had taken a ‘we’ll know when we see it’ approach to the issue,³⁵ a position that received some support within the academic literature.³⁶ Furthermore, the Report noted that the US government was of the view that the requirement for Iraq to “co-operate fully” had been retained in the resolution in order to ensure that *any* instances of non-cooperation would be material’, so that in the view of the US “any” Iraqi non-compliance was sufficient to constitute a material breach’.³⁷ The UK, on the other hand, was not initially of the view that every occasion of reporting of failure to comply by Iraq was a material breach,³⁸ but rather, that the action or actions concerned would need to be sufficiently serious. Indeed, while there was an acknowledgment by the UK Foreign and Commonwealth Office that—in somewhat similar terms to the position of the US—‘[e]ach case would need to be considered in the light of the circumstances’,³⁹ it emerged that ‘deliberate non-co-operation rather than inefficiency or confusion’⁴⁰ would be required on the part of Iraq.

²⁹ N Krisch, ‘Unilateral Enforcement of the Collective Will: Kosovo, Iraq and the Security Council’ (1999) 3 Max Planck Yearbook of United Nations Law 39, 71; Gray, *International Law*, 141; Lobel and Ratner, ‘Bypassing the Security Council’, 150; Murphy, ‘Assessing the Legality of Invading Iraq’, 202.

³⁰ See, eg, McGoldrick, *From ‘9-11’ to the Iraq War 2003*, 79.

³¹ Murphy, ‘Assessing the Legality of Invading Iraq’, 186.

³² UNSC Res 1441 (2002), para 1 (emphasis added).

³³ *Ibid*, para 4.

³⁴ Report, vol 5, Section 5, 12.

³⁵ *Ibid*, para 68.

³⁶ See, eg, WH Taft and TF Buchwald, ‘Preemption, Iraq and International Law’ (2003) 97 AJIL 557, 560.

³⁷ Report, vol 5, Section 5, para 427.

³⁸ *Ibid*, para 420.

³⁹ *Ibid*, para 88.

⁴⁰ *Ibid*, para 95.

C. Authority for Determining a 'Material Breach' and Take the Final Decision on Military Action

Resolution 1441 (2002) expressly stated that upon receiving a report of a further material breach, the Council would only be required to 'convene' to 'consider the situation', rather than be required to formally declare the existence of such a breach, or even the failure to 'cooperate fully', in making an assessment that military action was necessary.⁴¹ The real issue here was therefore the debate over who possessed the authority to declare a material breach and determine the subsequent consequences. Some scholars commenting upon this issue narrowly focused upon the text of resolution 1441 (2002), arguing that all that was required before military action became an option was for states to bring the 'fact' of material breach to the Council for its consideration.⁴² Others, however, felt that such a position removed the decision too far from the hands of the Council, so that despite the express wording of resolution 1441 (2002), the Security Council retained the final say over whether and when military action should take place.⁴³ In other words, there was no 'automaticity' for the use of force contained within the existing resolutions and more was required than a simple consideration of the issue by the Council. The fact that each resolution of the Security Council ended with the statement that the Council 'remain[ed] seized of the matter' should mean something tangible, particularly as it was the continuing validity of a Council authorisation that was in question.

It was the fact that what seemed like an ambiguous text had been adopted by the Security Council that led to claims being made that it had been drafted upon the basis of 'intentional ambiguity'.⁴⁴ This was particularly the case in light of the US and UK clearly reserving their right to take military action prior to its adoption – although acknowledging that the Council would be consulted on the issue⁴⁵ – while at the same time other members of the Council were making clear that the Council was to maintain control of the process.⁴⁶ As such, the Security Council had, it was argued, 'knowingly adopted a resolution the language of which would permit both sides to claim victory',⁴⁷ which had the intended effect of hiding the deep divisions that existed between the members of the Council and perhaps protect the Council and international law from permanent harm by cushioning it from the effects of these deep political divisions.⁴⁸ This was a view shared by the Iraq Inquiry as the Report specifically mentions that resolution 1441 (2002) represented a compromise containing drafting 'fixes', which 'created deliberate ambiguities on a number of key issues', in particular on the level of non-compliance necessary to constitute a 'material breach' for the purposes of the ceasefire

⁴¹ UNSC Res 1441 (2002), para 12.

⁴² Taft and Buchwald, 'Preemption', 561–62.

⁴³ Murphy, 'Assessing the Legality of Invading Iraq', 227.

⁴⁴ See M Byers, 'Agreeing to Disagree: Security Council Resolution 1441 and Intentional Ambiguity' (2004) 10 *Global Governance* 165.

⁴⁵ UNSC Verbatim Record (8 November 2002) UN Doc S/PV. 4644, para 3 (US).

⁴⁶ Ibid, France (para 5), Mexico (para 6), Ireland (para 7), Russia (para 8), Syria (para 10), Bulgaria (para 9), Colombia (para 11), Cameroon (para 11), Mauritius (para 12) and China (para 13).

⁴⁷ SD Mathias, 'The United States and the Security Council' in N Blokker and N Schrijver (eds), *The Security Council and the Use of Force* (Brill 2005) 176. More recently, D Akande and M Milanovic claimed that in adopting UNSC Res 2249 (2015) in response to the attacks by the Islamic State, the UNSC again adopted a resolution containing 'constructive ambiguity' regarding the legal basis of the forcible measures taken in response. See D Akande and M Milanovic, 'The Constructive Ambiguity of the Security Council's ISIS Resolution' (*EJIL Talk!*, 21 November 2015) <<https://www.ejiltalk.org/the-constructive-ambiguity-of-the-security-councils-isis-resolution/>>.

⁴⁸ Byers, 'Agreeing to Disagree', 181.

conditions and resolution 1441 (2002), whether such a determination was necessary, and, if so, in what form and by whom it should be made.⁴⁹

It was on the very last of these issues—that is, by whom a determination of material breach should be made—that the Iraq Inquiry Report arguably makes its most valuable contribution. While the Report highlights the different positions of those within the UK government as to how a ‘*further* material breach’ would be determined, it was the rather nuanced, but significant, approach of the UK Attorney General, Lord Goldsmith, to determining the existence of such a breach that arguably drew the most significant conclusion from the Inquiry. Lord Goldsmith had made clear in his evidence that such a determination could not have been made by the Prime Minister, but was instead reserved for the Security Council.⁵⁰ Yet, the Attorney General had written to the Prime Minister in March 2003, prior to providing the final green light of legality, stating that

[i]t is an essential part of the legal basis for military action without a further resolution of the Security Council that there is strong evidence that Iraq has failed to comply with and co-operate fully in the implementation of resolution 1441 and has thus failed to take the final opportunity offered by the Security Council in that resolution.⁵¹

In this letter, Lord Goldsmith – in seemingly going against his apparently clear position before the Inquiry that a material breach could only be determined by the Council – went on to say that whether Iraq was in ‘material breach[] ... is a judgement for the Prime Minister’ and ‘the Attorney would be grateful for confirmation that this is the case’,⁵² which the Prime Minister subsequently confirmed.

However, it became clear that the Attorney General believed that while the Prime Minister was not able to expressly determine a material breach, he was able to determine whether the factual circumstances existed that gave rise to one. Indeed,

the pre-determination had been made [by the Security Council in resolution 1441] that if there was a failure, it would be a material breach ... we had to decide whether there was a failure but, *if there was a failure, then the Security Council’s pre-determination would come in and clothe that with the character of material breach.*⁵³

Such a legal argument appears to be based upon a distinction without a difference. Under this view of the revival argument, while individual states were not able to determine for themselves whether a state was in material breach of the demands of a UN Security Council resolution, they were nonetheless permitted to determine whether the factual circumstances of such a breach existed, leading to the same result.

However, and importantly, the Iraq Inquiry Report expressed concern that ‘Mr Blair did not address how, in the absence of a consideration in the Security Council, the UK Government had reached the judgement that Iraq had failed to take its final opportunity’.⁵⁴ In this respect, and in light of the apparent general opposition within the Council to military action at the time, the Inquiry was of the view that ‘[g]iven the gravity of the decision, Lord Goldsmith should have been asked to provide written advice explaining how, in the absence of a majority in the Security Council, Mr Blair could take that decision.’⁵⁵ This finding formed a key element of the Inquiry’s central conclusion that ‘knowing that it did not have a majority in the Security

⁴⁹ Report, Executive Summary, para 130.

⁵⁰ Report, vol 5, Section 5, paras 756–57.

⁵¹ Ibid, para 744.

⁵² Ibid.

⁵³ Ibid, para 751 (emphasis added). Lord Goldsmith continued: ‘Only the Security Council could decide whether or not a particular failure or set of failures by Iraq to meet an obligation imposed by the Security Council resolution had the quality of being a ‘material breach’ of resolution 687.’ Ibid, para 757.

⁵⁴ Ibid, para 775.

⁵⁵ Chilcot, ‘Statement by Sir John Chilcot, 6 July 2016’.

Council in support of its actions ... the UK's actions undermined the authority of the Security Council.⁵⁶ As poignantly put by Elizabeth Wilmshurst, who resigned from her position as Legal Advisor at the Foreign and Commonwealth Office prior to the commencement of the invasion, '[t]his is not a finding that the war was therefore unlawful, but it does hint at it because the whole question of legality depended on whether the final decision for military action was one for the security council.'⁵⁷

The Inquiry was therefore of the view that, regardless of the terms employed within, or even the positions of its drafters, a resolution of the Security Council must ultimately be treated and respected as a collective instrument with an authoritative decision as to its interpretation being derived upon the basis of the views of a majority of member states at the time that an interpretation is called for. Consequently, what the Inquiry appears to suggest is that without a majority in support of action at the time—which had become all too clear with the withdrawal of the final draft of the 'second' resolution on 17 March 2003—it cannot be said that the resolutions had been interpreted in 'good faith', something which is foremost in the rules of interpretation contained within the VCLT.⁵⁸ It was this factor of the interpretive process that the Inquiry appeared to emphasize as ultimately of fundamental importance and, by doing so, sought to enforce the integrity and authority of the Council as a whole. Ultimately, the validity of the revival argument was one that could only have been determined by the Security Council in the particular circumstances, not by individual member states.

D. Security Council Vernacular for the Use of Forcible Measures

Although the Inquiry's conclusion was welcome, it nonetheless left open certain important issues that had played a key part in the preceding and subsequent debates. One such issue was in connection with Security Council vernacular for the use of forcible measures. The academic debate moved beyond whether the original authorisation to use 'all necessary means' in resolution 678 (1990) could be revived to questioning the exclusivity of this accepted Security Council euphemism for the authorisation of the use of force. In particular, despite the absence of this euphemism in resolution 1441 (2002), the argument was made that the inclusion in the resolution of a threat of 'serious consequences' in paragraph 13 of that resolution could—in light of military action being taken against Iraq in 1998 by the US and UK following a threat of such consequences by the Council—be taken as a clear indication that forcible measures were on the table.⁵⁹ However, other commentators argued against such an implication, particularly in light of the condemnation which the military action in 1998 ultimately received.⁶⁰ Nigel White has argued that language other than 'all necessary means' simply does not provide the green light for military force.⁶¹ Indeed, '[f]ailure to secure the necessary authorizing language in a resolution signifies a lack of consensus over military action' meaning

⁵⁶ Report, Executive Summary, para 439. See also Chilcot, 'Statement by Sir John Chilcot, 6 July 2016': 'In the absence of a majority in support of military action, we consider that the UK was, in fact, undermining the Security Council's authority.'

⁵⁷ E Wilmshurst, 'We ignored the rule of law – the result was Iraq' *The Guardian* (7 July 2016) <<https://www.theguardian.com/commentisfree/2016/jul/07/ignored-rule-law-war-result-was-iraq-un-charter-foreign-office-lawyer-2003>>.

⁵⁸ Art 31(1), Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331.

⁵⁹ FL Kirgis, 'SC Resolution 1441 on Iraq's Final Opportunity to Comply with Disarmament Obligations' (*ASIL Insights*, November 2002) ('The phrase "serious consequences" has been widely understood to include the use of force').

⁶⁰ Murphy, 'Assessing the Legality of Invading Iraq', 215.

⁶¹ ND White, 'The Legality of Bombing in the Name of Humanity' (2000) 5 *Journal of Conflict and Security Law* 27, 32.

that ‘it is disingenuous for certain states to then claim that they can unilaterally interpret resolutions as sanctioning military action.’⁶²

The Report brings to light the fact that the Lord Goldsmith and others within the UK Government were of the clear and united view that the threatened ‘serious consequences’ was, in addition to ‘all necessary means’, code for the use of force.⁶³ The Report of the Inquiry did not, however, provide any express or clearly targeted implicit rejection of such an argument. While it was of the view that ‘[t]he UK went to war without the *explicit* authorization which it had sought from the Security Council’,⁶⁴ this was in regards to the absence of consensus within the Council ‘that the time had come to terminate inspections and resort to force.’⁶⁵ Consequently, and on the basis of the overriding conclusion above, it might appear that the Inquiry was of the view that military action is legally permissible under the auspices of the Security Council, regardless of the terminology included within the particular resolution, providing that a majority of the Council, at the time, is in agreement that force is either necessary or an acceptable response.

E. The Concept of an ‘Unreasonable Veto’

The Inquiry’s central conclusion also leaves open a key issue that arose in connection with the so-called ‘second resolution’. There was significant discussion within the Report regarding a further dispute that arose between Tony Blair (the then UK Prime Minister) and Lord Goldsmith, as to the possible consequences of France, a permanent member of the Security Council, declaring that it would exercise its veto over any subsequent draft resolution regardless of the circumstances.⁶⁶ While Blair was of the view that such a position constituted an ‘unreasonable’ use of the veto, particularly if there was a majority within the Council in support of forcible measures, Lord Goldsmith was of the view that there was no ‘room for arguing that a condition of reasonableness [could] be implied as a precondition for the exercise of a veto’.⁶⁷ Unsurprisingly, the Inquiry steered clear of pronouncing upon whether what might be described as a doctrine of ‘unreasonable veto’ could be invoked in these particular circumstances or whether one existed within international law more generally.⁶⁸ Yet, the Inquiry’s position that the Council’s authority is undermined in circumstances when action is taken in the absence of a majority in support leaves open the question as to the permissibility of military action should a veto be cast or threatened against a resolution that not only has the effect of authorizing or reviving an authorisation to use force, but which also has the support of a majority within the Council.⁶⁹

III. THE NECESSITY AND PROPORTIONALITY OF MILITARY ACTION

The twin principles of necessity and proportionality are firmly grounded within the legal

⁶² Ibid.

⁶³ Report, vol 5, Section 5, para 116.

⁶⁴ Report, Executive Summary, para 338 (emphasis added).

⁶⁵ Ibid.

⁶⁶ See, eg, Report, vol 5, Section 5, para 894.

⁶⁷ Ibid, para 194.

⁶⁸ See, in general, I Johnstone, ‘When the Security Council is Divided: Imprecise Authorizations, Implied Mandates, and the “Unreasonable Veto”’, in M Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 227.

⁶⁹ The proponents of the draft second resolution were only going to put it to the vote if a majority of nine states looked to be in favour of it. In the event, a majority was not present, with the proponents of the resolution only being able to muster seven, as opposed to the preferred nine, votes.

framework governing the use of force in self-defence.⁷⁰ There is, however, some debate as to whether they are applicable to action authorized by the UN Security Council. Given that these principles are commonly traced back to correspondence between Britain and the United States following the *Caroline* incident of 1837, some have claimed in general terms that they are inextricably linked to the right of self-defence.⁷¹ Others, however, have made the case that they also apply to actions taken under the auspices of the UN Security Council.⁷² For the revival argument, it would mean that ‘[i]f a material breach of Resolution 687 is the trigger for using force under the authority of Resolution 678, then presumably that use of force is limited to what is necessary and proportionate in addressing the material breach.’⁷³ The Report did not expressly refer to this debate. But in documenting the relevance of the principles to the deliberations of government lawyers within the UK,⁷⁴ as well as through its overarching conclusions, the Report of the Inquiry contributed to the debate on how these principles operated in the context of the military action in Iraq in 2003, but also in the law governing the use of force more generally.

A. Necessity

The principle of necessity requires that forcible action is a last resort, in that all reasonable peaceful alternatives have been exhausted or would prove futile.⁷⁵ While, given its limited mandate, the Report of the Inquiry steered clear of directly referencing this principle as a condition for the legality of the use of force under the *jus ad bellum*, its conclusions are nonetheless illuminating. For example, Sir John Chilcot noted in his statement of 6 July 2016 that the Inquiry had ‘concluded that the UK chose to join the invasion of Iraq before the peaceful options for disarmament had been exhausted. Military action at that time was not a last resort.’⁷⁶ This was repeated within the Executive Summary of the Report where it was stated that ‘[i]n the Inquiry’s view, the diplomatic options had not at that stage been exhausted. Military action was therefore not a last resort’⁷⁷ and in the Report itself that ‘[a]t the time of the Parliamentary vote of 18 March, diplomatic options had not been exhausted. The point had not been reached where military action was the last resort.’⁷⁸

The peaceful diplomatic option that the Inquiry appeared to conclude had not been exhausted was the continuation and completion of weapons inspections. It was clear that it was also the underlying reason for most members of the Security Council adopting the position that the use of force was—at that time—unnecessary. As Sir John Chilcot noted in his statement:

⁷⁰ See, in general, J Gardam, *Necessity, Proportionality and the Use of Force by States* (Cambridge University Press 2004).

⁷¹ Dinstein, *War, Aggression and Self-Defence*, 309. More implicitly, Christine Gray also restricts her discussion of these principles to the context of self-defence. See Gray, *International Law*, 148–56, 203–08, 241–44.

⁷² Gardam, *Necessity, Proportionality*, 188–229; Murphy, ‘Assessing the Legality of Invading Iraq’, 196. The Chapter VII regime for Security Council enforcement action follows this general principle, in that it Article 42 of the Charter of the United Nations (1945) states that it is only ‘[s]hould the Security Council consider that [measures not involving the use of armed force] provided for in Article 41 would be inadequate or have proved to be inadequate’ that it may resort to the measures involving the use of armed force in art 42.

⁷³ Murphy, ‘Assessing the Legality of Invading Iraq’, 196.

⁷⁴ For example, Sir Michael Wood (Report, vol 5, Section 5, para 112) and Lord Goldsmith (Report, vol 5, Section 5, paras 185, 278 and 583–85).

⁷⁵ See, eg, JA Green, *The International Court of Justice and Self-Defence in International Law* (Hart 2009) 85–86.

⁷⁶ Chilcot, ‘Statement by Sir John Chilcot, 6 July 2016’.

⁷⁷ Report, Executive Summary, para 20.

⁷⁸ Ibid, para 339.

[w]ithout evidence of major new Iraqi violations or reports from the inspectors that Iraq was failing to co-operate and they could not carry out their tasks, most members of the Security Council could not be convinced that peaceful options to disarm Iraq had been exhausted and that military action was therefore justified.⁷⁹

This did not preclude the possibility that '[m]ilitary action in Iraq might have been necessary at some point'⁸⁰ but just that in March 2003:

- There was no imminent threat from Saddam Hussein.
- The strategy of containment could have been adapted and continued for some time.
- The majority of the Security Council supported continuing UN inspections and monitoring.⁸¹

Furthermore, the Report asserts that:

[w]hen the UK sought a further Security Council resolution in March 2003, the majority of the Council's members were not persuaded that the inspections process, and the diplomatic efforts surrounding it, had reached the end of the road. They did not agree that the time had come to terminate inspections and resort to force.⁸²

While the Report does not expressly relate this to the *jus ad bellum* concept of necessity, the customary law principles of necessity and proportionality are mentioned in the Report as being of relevance in to Lord Goldsmith's decision on whether to launch military action. These conclusions would therefore arguably appear to be a clear reference to the principle of necessity as it exists in this context.⁸³ The significance of these findings are that they might be seen as support for those international lawyers that argue that the principle of necessity applies beyond the confines of self-defence to include action taken under a Security Council mandate, and in the context of military action against Iraq, to action taken in response to a 'material breach' of an obligation imposed by a Security Council resolution. As such, and without directly casting a view on the revival argument itself, it can be inferred that the Inquiry was of the view that while a broader assessment of the necessity of the action is important in any assessment regarding its legality, a further key indicator is whether a clear majority of the UN Security Council is in favour of military action under its auspices at the time it is launched. In this respect, the conclusions of the Inquiry go as far as possible in confirming that the military action was unlawful on this basis, without expressly stating as much.

B. Proportionality

Some scholars have argued that, to satisfy the requirement of proportionality, any military action against Iraq taken on the basis of the revival argument in response to a material breach should be either limited to the destruction of any weapons, stocks or manufacturing facilities related to WMD production,⁸⁴ or to compel Iraq's acceptance of the weapons inspectors,⁸⁵ but cannot extend to 'a state or group of states invading and occupying Iraq and toppling its government'.⁸⁶ While it was deemed at least plausible that material breaches of obligations under resolution 687 (1991) might be of such a magnitude that the only means to address them would be to oust the Iraqi government, it was also the case that

⁷⁹ Chilcot, 'Statement by Sir John Chilcot, 6 July 2016'.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Report, Executive Summary, para 338.

⁸³ Report, vol 5, Section 5, para 278.

⁸⁴ J Murphy, 'De Jure War in the Gulf: Lex Specialis of Chapter VII Actions Prior to, During, and in the Aftermath of the United Nations War Against Iraq' (1992) 5 New York International Law Review 71, 85.

⁸⁵ Murphy, 'Assessing the Legality of Invading Iraq', 196-97.

⁸⁶ Ibid.

leaving to individual states the ability to determine that such a situation has been reached is inconsistent with the otherwise systematic engagement of the United Nations in the creation and monitoring of Iraq's WMD obligations.⁸⁷

Other scholars went further, arguing that '[a]ny additional military action, such as removal of the existing political regime in Iraq, would seem to require a new Security Council resolution'.⁸⁸ Either way, however, the determination that military action leading to regime change would be a proportionate response is one to be taken by the UN Security Council. On the other side of the fence, were scholars who took the view that, in light of the long history of defiance by Iraq which continued up until 19 March 2003, combined with the ability for member states to determine a material breach for themselves, regime change on this occasion was an entirely proportional military response.⁸⁹

The Report of the Iraq Inquiry highlights that regime change was something that the UK had long considered unlawful, so that 'based on consistent legal advice' the UK could not share this as an objective.⁹⁰ However, in highlighting the interconnectivity between necessity and proportionality, Lord Goldsmith advised that it was 'not to say that action may not be taken to remove Saddam Hussein from power if it can be shown that such action is necessary to secure the disarmament of Iraq and that it is a proportionate response to that objective'.⁹¹

While one of the central findings of the Inquiry was that military action in March 2003 was unnecessary, nothing as direct was said about whether such action was proportionate. This may, on the one hand, seem surprising, given the overall magnitude of the military action, including, of course, a change of regime, and the critical views of the Inquiry of the entire campaign. However, it could be argued that given that it had determined that the military action was unnecessary, it did not need to express an opinion regarding its proportionality, even if it had have been a body constituted to so. Indeed, '[i]t is not clear how far the two concepts can operate separately. If a use of force is not necessary, it cannot be proportionate and, if it is not proportionate, it is difficult to see how it can be necessary.'⁹² It is, therefore, on this basis and in reading between the lines that one could conclude that the military action was, in the view of the Inquiry, disproportionate.

However, given that regime change was the only aim and realistic outcome of the action both prior to the invasion and once it had begun, tackling this issue head on would have been an interesting question for the Inquiry, particularly in light of the enormity of the invasion, its lasting consequences and the uncertain non-imminent threat that ostensibly provoked it. Indeed, if we are to view the Report of the Inquiry in terms of 'lesson learning', it might have explored more thoroughly the issue as to whether there existed any more proportionate action of a military or non-military nature that could have been taken to enforce the resolutions and to counter the perceived threat.

IV. THE RIGHT OF SELF-DEFENCE

The UK and Australia focused exclusively on the revival argument in their letters to the UNSC upon the launching of military action against Iraq.⁹³ Indeed, Lord Goldsmith had been clear

⁸⁷ Ibid, 197.

⁸⁸ Murphy, 'Assessing the Legality of Invading Iraq', 185.

⁸⁹ R Wedgwood, 'The Fall of Saddam Hussein: Security Council Mandates and Preemptive Self-Defense' (2003) 97 AJIL 576.

⁹⁰ Report, Executive Summary', para 25.

⁹¹ Report, vol 5, Section 5, para 185.

⁹² Gray, *International Law*, 150.

⁹³ See UN Doc S/2003/350 (20 March 2003) and UN Doc S/2003/352 (20 March 2003) respectively.

from March 2002 that, in his opinion, there were no grounds for a claim of self-defence.⁹⁴ The US, on the other hand, also tentatively raised the issue of self-defence in its letter to the UNSC.⁹⁵ It was in this light, and against the background of the so-called Bush doctrine,⁹⁶ that several scholars also discussed and debated the applicability of the doctrine of pre-emptive self-defence to the military action.⁹⁷

Although the Report focused in the main on the ‘revival’ argument, the justification of self-defence was also addressed. Whether the actions of Iraq could have constituted an ‘armed attack’ for the purposes of Article 51 was not specifically discussed in the Report. However, in a rather obscure and unexplained part, a note from Prime Minister Tony Blair to his Chief of Staff, Jonathon Powell, was quoted in which the Prime Minister states that ‘[w]e need to explore ... whether we c[oul]d revive the self-defence etc arguments’.⁹⁸ It was not clear in what way Tony Blair was suggesting reviving self-defence, and the connection between the two. It is, for example, unlikely that he was referring to Iraq’s invasion of Kuwait, which initially gave rise to the right of collective self-defence of Kuwait, given that Kuwait had not been attacked by Iraq since. It is also difficult to see any of the actions by Iraq in connection with the weapons inspection programme (as opposed to some of the arguments raised in regard to protecting the no-fly zones) as giving rise to issues of self-defence, let alone how they might be ‘revived’. Nonetheless, the Report concluded that

[g]iven the consistent and unambiguous advice of the [Foreign and Commonwealth Office] Legal Advisers from March 2002 onwards and Lord Goldsmith’s advice from 30 July 2002, that self-defence could not provide a basis for military action in Iraq, the Inquiry has seen nothing to support Mr Blair’s idea that a self-defence argument might be “revived”.⁹⁹

However, against the backdrop of the Bush doctrine of pre-emptive self-defence, which the US may well have relied upon if it had not been persuaded by the UK to take the UN route, the issue of self-defence in the face of an ‘imminent’ threat from Iraq was noted at various points during the Inquiry proceedings and in the final Report. While expressing doubt as to the existence of a right of pre-emptive self-defence against more temporally remote threats,¹⁰⁰ Lord Goldsmith consistently acknowledged that the right of self-defence existed in the face of the threat of an imminent attack,¹⁰¹ although never gave an indication that in his view Iraq posed such a threat.¹⁰² Three interesting elements of the Report of the Iraq Inquiry emerge in this respect. The first is that, as noted above, a clear conclusion of the Inquiry was that ‘[t]here was no imminent threat from Saddam Hussein’.¹⁰³ The second was the detail in which the Report

⁹⁴ Report, vol 5, Section 5, para 168.

⁹⁵ UN Doc S/2003/351 (20 March 2003).

⁹⁶ As enunciated in its fullest in Office of the White House, *The National Security Strategy of the United States* (2002).

⁹⁷ See, eg, C Greenwood, ‘International Law and the Preemptive Use of Force: Afghanistan, Al Qaida and Iraq’ (2003) 4 San Diego International Law Journal 33; Yoo, ‘International Law and the War in Iraq’, 563; M Sapiro, ‘Iraq: Shifting Sands of Preemptive Self-Defense’ (2003) 97 AJIL 599; McGoldrick, *From ‘9-11’ to the Iraq War 2003*, 67–76; Taft and Buchwald, ‘Preemption’, 557; C Henderson, ‘The Bush Doctrine: From Theory to Practice’ (2004) 9 Journal of Conflict and Security Law 3; Gray, *International Law*, 216–22; Wedgwood ‘The Fall of Saddam Hussein’, 576; Weller, *Iraq and the Use of Force*, 133–44.

⁹⁸ Ibid, para 202.

⁹⁹ Ibid, para 199.

¹⁰⁰ ‘Full text: Iraq legal advice’, *The Guardian* (28 April 2005) <<https://www.theguardian.com/politics/2005/apr/28/election2005.uk>>.

¹⁰¹ Ibid.

¹⁰² Goldsmith noted that ‘[t]here wasn’t the evidence of imminence of threat which would justify us in saying self-defence was a basis for force.’ See ‘Letter from Lord Goldsmith to Geoff Hoon’, 6 January 2011 <<http://www.iraquinquiry.org.uk/media/224438/2002-03-28-Letter-AG-to-Hoon-untitled.pdf>>.

¹⁰³ Chilcot, ‘Statement of Sir John Chilcot, 6 July 2016’.

goes into in establishing that Iraq did not pose such an imminent threat, with a clear finding that other states were seen by the British intelligence services as far more of a danger in this respect.¹⁰⁴ Third, in what may be seen as a highly significant contribution of the Report to doctrinal debates regarding the use of force, in seemingly requiring the existence of at least an imminent attack before military action might have been lawful there is arguably a clear, albeit implicit, acceptance of the right of anticipatory self-defence, something that, although having garnered some notable support in state practice and scholarly comment, remains far from universally accepted.¹⁰⁵ Given that the UK based its legal justification exclusively on Security Council authorization, one might also question whether the Report's discussion of the question as to whether Iraq posed an imminent threat was in fact misplaced. It does, however, arguably tie in to the broader conclusions and lessons regarding both the general lack of necessity of the military action and the poor gathering, handling and presentation of intelligence.

V. CONCLUSION

It has been argued that the fact '[t]hat the committee [did] not criticize the substance of Goldsmith's legal conclusions tends to indicate that the committee did not find them "manifestly implausible"'.¹⁰⁶ Yet, while the Inquiry did not speak, at least directly, in legal terms regarding the legal justification advanced for the invasion, one must bear in mind that the legality of the military action was outside of the mandate of the Inquiry. Moreover, the Inquiry was clear that it was not one of last resort and that it had undermined, not acted in furtherance of, the authority of the UN Security Council.¹⁰⁷ Its overarching conclusions, including its somewhat veiled judgment as to the legality of the military action, would thus appear to cast doubt upon, if not constitute a categorical rejection of, the underlying basis of that justification.¹⁰⁸ In addition, while this would appear to be a rejection of the legal argument, with the Inquiry's conclusion that the military action 'fell far short of strategic success',¹⁰⁹ it was also scathing of the righteousness of the war in other respects.

If reading between the lines we get a clear sense that the Iraq Inquiry was all but clearly stating that the decision to forcibly intervene in Iraq in 2003 was unlawful, this poses the question of what now? The Report provides real support to claims that the military action was an act of aggression by the UK. In this respect, the Report also, and perhaps even more controversially, provides support to the claim that such an unlawful use of force on such a scale amounts to the crime of aggression,¹¹⁰ thereby personally implicating Tony Blair. This is an issue that has recently come before the High Court in the *Al-Rabbat* case, brought in direct response to the publication of the Iraq Inquiry report.¹¹¹ Yet, due to various impediments based on jurisdiction, immunity, and politics, it is unlikely that Tony Blair will come before a court to answer such allegations.

¹⁰⁴ Report, Executive Summary, paras 40–47.

¹⁰⁵ See, eg, C Gray, 'A Crisis of Legitimacy for the UN Collective Security System?' (2008) 56 *International and Comparative Law Quarterly* 157.

¹⁰⁶ J Bellinger, 'The Chilcot Inquiry and the Legal Basis for the Iraq War' (*Lawfare*, 11 July 2016) <<https://www.lawfareblog.com/chilcot-inquiry-and-legal-basis-iraq-war>>.

¹⁰⁷ M Milanovic, 'A Rejoinder to John Bellinger on the Chilcot Report' (*EJIL Talk!*, 13 July 2016) <<https://www.ejiltalk.org/tag/chilcot/>>.

¹⁰⁸ In the *Al-Rabbat* case, Michael Mansfield described the findings of the Inquiry as 'emphatic' in indicating that the military action 'was an unlawful war' 'Tony Blair must be prosecuted over Iraq War, High Court hears', *The Independent* (5 July 2017) <<http://www.independent.co.uk/news/uk/crime/tony-blair-iraq-war-prosecution-high-court-war-crimes-latest-a7824891.html>>.

¹⁰⁹ Report, Executive Summary, para 792.

¹¹⁰ See, eg, 'Wilmshurst resignation letter' *BBC News* (24 March 2005) <http://news.bbc.co.uk/1/hi/uk_politics/4377605.stm>.

¹¹¹ *R (Al Rabbat) v Westminster Magistrates' Court and others* [2017] EWHC 1969 (Admin).

It is in this light, however, that the real significance of such inquiries can be seen. Sir John Chilcot was at pains to emphasise that the Inquiry was not able to express a view on the lawfulness of the UK's participation in the military action against Iraq in 2003, something that could evidently only be provided by a 'properly constituted and internationally recognised Court'. Yet, the decentralised nature of the international legal system means that such courts do not have an exclusive prerogative over expressing views as to legality. Consequently, and in the absence of the issues ever coming before a court of law, the Iraq Inquiry has somewhat unwittingly provided the most formal and authoritative treatment of both the factual and legal issues regarding the UK's involvement in Iraq. Indeed, the Inquiry has provided a transparent and comprehensive historical record of the serious and tragic events that led to this blot on the history of the UK, and drew appropriate conclusions, some of which have legal implications. For this it should be commended. In this light, while the competing arguments regarding the revival of authority were described as 'at least as powerful',¹¹² with some viewing the doctrinal debate as 'a draw',¹¹³ the conclusions of the Inquiry have arguably tipped the balance in favour of those critical of the legality of the military action taken. In this respect, the Inquiry was not, and never claimed to be, a court of law, but it has provided a lasting indictment of the acts and actors involved that will no doubt stand the test of time.

¹¹² Johnstone, 'When the Security Council is Divided', 241.

¹¹³ Wedgwood, 'The Fall of Saddam Hussein', 580.